

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 106 OF 1993

The United India Insurance Co.Ltd.... Appellant.

V/s.

Shri Krishna Keshav Savaratkar
and others.

... Respondents.

Dilip Mahadik i/b. S.R.Singh for the appellant.

V.S.Gokhale for respondent Nos.1 to 5.

CORAM : D.G.DESHPANDE, J.

DATED : 3rd February, 2005.

ORAL ORDER :

. Heard learned counsel for the appellant and respondent Nos.1 to 5.

2. Only one point is raised by learned counsel for the appellant that, according to him, this accident occurred on 1st October, 1985; wherein the lady police constable while she was going on bicycle met with an accident as a result of dash given by the auto-rikshaw bearing No.MTD-5574 which was coming from behind and she ultimately died on 7th October, 1985.

3. The Motor Accident Claims Tribunal, Alibaug awarded Rs.1,04,000/- to the claimants who are legal heirs of the deceased. It was held to be a joint

and several liability of both the opponents i.e. the present appellant and respondent No.6, the owner of the rickshaw. Learned counsel for the appellant contended that as provided by section 95(2)(b) of the Motor Vehicles Act, 1939 which was applicable at the relevant time, in a case of comprehensive insurance policy in respect of where the vehicle in which the passengers are carried for hire --- a limit of Rs.50,000/- has been fixed. He, therefore, contended that even if the insurance company was found to be liable, its liability could not have been beyond Rs.50,000/- in view of the statutory legal bar or the provision.

4. In support of his contention he also relied upon judgment of the Supreme Court in the case of **New India Assurance Co. Ltd. v. C.M.Jaya and others**, 2002 ACJ 271. In that case, there was death of pillion rider on two-wheeler when the scooter met with an accident with a truck. The truck was comprehensively insured but no additional or higher premium was paid to cover unlimited or higher liability than the statutory liability. As per the law prevailing at the time of accident the liability of the insurance company was only Rs.50,000/-. The Court held in para-12 of its judgment that since no

additional premium was paid to cover unlimited or higher liability, the statutory liability fixed as found in the terms of the policy would apply.

5. Considering, therefore, the provision of section 95(2)(b) of the Motor Vehicles Act and the aforesaid judgment of the Supreme Court, this appeal is required to be allowed and the liability of the insurance company is liable to be restricted to Rs.50,000/-. Learned counsel for the appellant pointed out that at the time of admission of the appeal appellant has deposited Rs.1,67,109.50 in this Court. He, therefore, contended that if the liability of the insurance company is only Rs.50,000/- then the appellant should be permitted to withdraw the remaining amount. Hence I pass the following order:

ORDER

. Appeal is allowed.

. The award passed by the tribunal is modified. The liability of the appellant - insurance company is fixed at Rs.50,000/- only with interest as granted by the

tribunal. It is held that it will be the responsibility of the owner of the vehicle who will be liable to pay the remaining amount of the compensation awarded by the tribunal. The appellant will be entitled to withdraw the amount that is now lying with the Court after payment of amount awarded in favour of the claimants against the insurance company.

. Appeal is disposed of with no order as to costs.
